

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 4404/2001 (S/S)

Heera Singh and others		Petitioners.
	Versus	
State and others...		Respondents.

Date of decision: 05, November 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the
reporters for reporting? (Yes)

- Whether the reporters be allowed to see the
judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 4404 of 2001 (S/S)

Shri Heera Singh
S/o Shri Harsh Singh
R/o Village-Bhilgar, P.O.-Bhagtola
Distt-Almora
Presently C/o Shri Govind Singh Bora
Village Falya (Arjun Rath)
P.O.- Someshwar, District-Almora Petitioner

Versus

1. State of Uttaranchal, through Director
General Police, Uttaranchal,
Dehradun
 2. Inspector General Police
Dehradun
 3. Dy. Inspector General Police
Garhwal Range- Pauri
 4. Superintendent of Police
Pauri
- Respondents

Mr. U.S. Bhakuni, learned Counsel for the petitioner.
Mr. Subhash Upadhyaya, learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari for quashing impugned order dated 25.04.2000 passed by respondent No. 4 where by the petitioner was dismissed from service and order dated 18.06.2000 passed by respondent no. 3 by which the departmental appeal preferred by him in this regard is also dismissed.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner was initially appointed as a Constable on

2.01.1974 with the U.P. Police at Nainital. Subsequently, he was posted at Pithoragarh in the year 1983 and thereafter in Tehri Garhwal in 1990. Lastly he was performing his duties in the District of Pauri Garhwal since 1994. On 1.04.1999, the petitioner was allegedly implicated in a case and crime No. 244 of 1999 registered at Police Station, Srinagar under section 34 of Police Act with the allegations that while on duty as Treasury Guard on 01.04.1999 at 9:00 P.M., the petitioner was allegedly found in a drunken state, making nuisance, shouting loudly and using abusive language (copy of the report at Annexure-3 to the writ petition). On said charge, the petitioner was placed under suspension (copy Annexure-4 to the writ petition) by Shri Piyush Kumar, Superintendent of Police, Pauri Garhwal and Shri Narain Dutt Joshi, Reserve Police Inspector was directed to hold a preliminary inquiry (copy Annexure-5 to the writ petition) who recommended departmental inquiry against the petitioner. However, after preliminary inquiry, the suspension order passed against the petitioner was revoked and meanwhile, Shri Vijay Bhatia who took over as Superintendent of Police, Pauri Garhwal, directed to initiate the departmental inquiry against the petitioner and Shri D.K. Thapliyal, Dy, Superintendent of Police, Pauri Garhwal was asked to draft the charges under Section 7 of Police Regulation 1861. Later on Shri Hukum Singh, Dy. Superintendent of Police conducted the inquiry and recorded the statements of Head Constable, Shri Prem Kant Misra, Constable Rajbir Singh and Sub-Inspector Rajkishore Singh but no public witness was examined. It is alleged in the writ petition that the statement of witnesses recorded were contradictory. The Inquiry Report (copy Annexure-7 to the writ petition) was submitted against the petitioner by the Dy. Superintendent of Police holding the petitioner guilty. It is alleged in the writ petition that the Inquiry Officer did not care to consider the report of the Doctor

about consciousness and normal speech of the petitioner mentioned in the Medical Report (copy of Medical Report at Annexure-8 to the writ petition). Superintendent of Police (respondent No. 4) on the basis of Inquiry Report dismissed the petitioner from service vide order dated 25.04.2000 (copy Annexure-1 to the writ petition). Against said order, the petitioner preferred the departmental appeal before appellate authority i.e. Dy. Inspector General, Garhwal Range, Dehradun who upheld the punishment and dismissed the appeal vide order dated 18.06.2000 (copy Annexure-2 to the writ petition). It appears that the petitioner made a revision before the Inspector General, Meerut Zone, Meerut (copy Annexure-10 to the writ petition) but to no avail. Meanwhile, in the criminal case No. 244 of 1999 under section 34 of Police Act, Shri Prashant Joshi, Learned Judicial Magistrate, Srinagar, on 18.11.2001 (one year after punishment awarded by departmental authorities) acquitted the petitioner from the charge (copy of judgment Annexure-11 to the writ petition). It is alleged in the writ petition that dismissal order passed by the Department is unjust and unfair and relying the principle of law laid down in M. Paul Anthony V/s Bharat Gold Mines Ltd. (1992) 2-U.P.L.B.E.C. 1280, this writ petition has been filed.

3) On behalf of the respondents no. 1 to 4, a counter affidavit has been filed in which the appointment and postings of the petitioner are not denied. But it is alleged that on the date of incident i.e. 01.04.1999 at about 9:00 P.M. when the petitioner was not duty as Treasury Guard, in a drunken state created nuisance on which Crime No. 244/99 was registered against him under section 34 of Police Act, with Police Station, Srinagar. It is also admitted that the petitioner was placed under suspension immediately and the inquiry was ordered. Defending conclusions of the Departmental enquiry, it is stated

in the counter affidavit that full and fair opportunity was afforded to the petitioner. Before coming to the conclusion in departmental enquiry, it is further stated in counter affidavit that under para 373 A of Police Regulations, during duty hours the policemen are prohibited from taking alcohol but the petitioner not only remained alcoholic at the time of duty but also indulged in acts of indiscipline. Lastly, it is stated that the impugned order of dismissal and order of dismissal of appeal are just and in accordance with the law.

4) I heard learned counsel for the parties and pursued the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the petitioner is wrongly been dismissed from service and if his departmental appeal has wrongly been rejected.

6) Admittedly, the petitioner was a policeman i.e. member of disciplined force. It is also not disputed that on account of alleged incident of 01.04.1999 in which he was found allegedly drunken and creating nuisance, he was placed under suspension and an inquiry was initiated against him. This Court has to see if the petitioner has been given fair opportunity to defend and also if the order of dismissal is just and in accordance with law.

7) Learned counsel for the petitioner drew my attention to the copy of judgment order dated 18.06.01 (copy Annexure-11 to the writ petition) passed by Learned Judicial Magistrate, Srinagar, whereby the petitioner was acquitted from the charge punishable under section 34 of Police Act, 1861, and argued that on the similar charge, the petitioner has been wrongly found guilty by the departmental authorities which resulted in his dismissal. It is further argued that in view of the acquittal

from the charge by the court, the order of dismissal cannot be said to be just and proper or in accordance with the law. I have perused the said judgment and order of the criminal court and found that the ground mentioned in the judgment is that prosecution has failed to prove the charge beyond the reasonable doubt.

8) It is settled principle of law that the principles of Evidence Act, 1872, which are applicable in the courts are not strictly required to be adhered by the departmental authorities. As such merely for the reason that the charge was not proved in the Court beyond reasonable doubt, it cannot be said if the conclusions arrived at by the department authority are wrong on that ground alone. What is important in departmental inquiry is that the fair and proper opportunity be given to the delinquent official. It is not the case of the petitioner that he was not given the opportunity to defend himself in the departmental inquiry.

9) Shri U.S. Bhakuni, Learned counsel for the petitioner drew my attention also to the Medical Report (copy Annexure-8 to the writ petition) and argued that petitioner was found fully conscious at the time of Medical examination at 11:05 P.M. on 01.04.1999. The contents of Medical Report, in my opinion cannot be read in isolation and entire examination report needs to be read. In the last sentence of the medical examination report, it is clearly mentioned –“*Breathing smell alcoholic*”. As such the report read with said sentence in the report corroborates the conclusions of the departmental authorities.

10) It is also submitted on behalf of the petitioner that no public witnesses were examined by the authorities concerned. I see little force in the submission for the reason that this Court

has to keep in mind that the incident is of late evening i.e. after 9:00 P.M. No public witness is supposed to be present in the treasury at that point of time.

11) It is pertinent to mention here that as per the impugned order dated 25.04.2000 (copy Annexure-1 to the writ petition), the petitioners service record shows following earlier punishments in his character roll:-

1. In 1995 for negligence in duty in District Nainital, petitioner was censured.
2. In the year 1981, the petitioner was punished by 7 days P.D. for unauthorized absence.
3. In 1982 for another unauthorized absence in the same District, punishment of 7 days P.D. awarded.
4. Again in the year 1982, when the petitioner was posted in District Pithoragarh, he was awarded 7days yet another P.D. for changing the date of remand of the accused.
5. In the year 1987 while on duty in District Pithoragarh, he was found in drunken state and once again awarded punishment of 7 days P.D.
6. In the year 1997, when the petitioner was posted in Pauri Garhwal, he was awarded 7 days P.D. there also for his absence.
7. In the year 1998, four times the petitioner absented himself without authorized leave and each time awarded 7 days P.D.
8. In the year 1999, again in District Pauri Garhwal, he was awarded 5 days P.D. for the absence from duty.

In the circumstances, punishment of dismissal on the present charge relating to the incident of 01.04.1999 cannot be said to be unjust or improper. The discretionary power of the court

under article 226 of the Constitution of India are not meant to encourage such delinquent officials in service.

12) In view of the above discussions, this Court is not inclined to interfere with the impugned orders and the writ petition is liable to be dismissed. The writ petition is dismissed. No order as to costs.

(Prafulla C. Pant J)

Dt.: November 5, 2004
Sweta